

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

**MARCUS WILLIAMS and
TERESA WILLIAMS,**

Plaintiffs,

v.

**GEOVERA SPECIALTY INSURANCE
COMPANY,**

Defendant.

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Civil Action No. 1:16-cv-00160

MOTION TO DISMISS WITHOUT PREJUDICE

COMES NOW GeoVera Specialty Insurance Company and files this, its Motion to Dismiss Without Prejudice. In support thereof, Defendant states as follows:

1. Plaintiffs filed suit in state court on May 26, 2016¹.
2. Defendant was served on or about June 2, 2016 and filed its answer in state court on June 24, 2016².
3. Thereafter, Defendant removed the action to federal court based on diversity of citizenship pursuant to 28 U.S.C. §§ 1332(a), 1441(a) and 1446³.
4. On September 20, 2016, the parties conferred as required by Rule 26(f) and submitted a proposed Agreed Scheduling Order, entered by the court on October 18, 2016⁴.
5. Following, Defendant sought the depositions of Plaintiffs Marcus Williams and Teresa Williams. The depositions were scheduled to take place on December 16, 2016 and

¹ See Dkt No. 1(c).

² See Dkt No. 1(f).

³ See Dkt. 1.

⁴ See Dkt. Nos. 5, 6, and 8.

subsequently rescheduled for January 13, 2017 to accommodate Plaintiffs' counsel's request.

6. On January 10, 2017, attorneys for Plaintiffs, Livesay and McCarthy, cancelled the depositions and filed a Motion for Withdrawal as Counsel of record for Plaintiffs⁵.
7. On January 13, 2017, the Court ordered a hearing on the Motion to Withdrawal as it pertains to Attorney McCarthy, requiring the Plaintiffs appear in person. The hearing was set for January 24, 2017.
8. On January 24, 2017, Attorney William J. McCarthy appeared for Plaintiffs and Attorney Ricardo Morado appeared on behalf of Defendant GeoVera at the hearing on the Motion to Withdrawal⁶. Plaintiffs did not appear. At the hearing, Attorney McCarthy urged that the Court's order commanding Plaintiffs' appearance was mailed on January 20, 2017, only giving the Plaintiffs a few days' notice of the hearing. He requested, and the court granted, a period of seven days in which he would attempt to contact the plaintiffs to ascertain whether they wished to continue with this lawsuit with him as counsel. Attorney McCarthy was to call the Court Coordinator no later than January 31, 2017 to inform whether he had been successful in contacting the plaintiffs and obtaining authority to represent them. No update to the court was provided by Attorney McCarthy.
9. Accordingly, upon information and belief, Plaintiffs no longer desire to prosecute this matter against Defendant.
10. Therefore, Defendant GeoVera Specialty Insurance Company requests the Court enter a dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute.

⁵ See Dkt. 9.

⁶ See Dkt. 9, 10.

PRAYER

WHEREFORE, Defendant GeoVera Specialty Insurance Company respectfully requests the Court enter an Order of Dismissal Without Prejudice, with each party to bear its own costs, if any.

Respectfully submitted,

/s/ Rhonda J. Thompson

Rhonda J. Thompson, Attorney-In-Charge

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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on the 14th day of February 2017, a true and correct copy of the foregoing was delivered to pursuant to the Federal Rules of Civil Procedure via the means indicated below:

Via Electronic Filing:

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/s/ Adrienne H. Nelson

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